Supreme Court, U.S.
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OFFICE OF THE CLERK

No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

ALFRED Y. K. AU, Petitioner-Appellant	U.S. Court of Appeal for 9th Cir. No. 94-70048
vs.	
COMMISSIONER OF INTERNAL REVENUE Respondent-Appellee	Tax Ct. No. 19882-93D

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT

Alfred Y.K. Au, pro se
for Petitioner-Appellant

1050 - 12th Avenue
Honolulu, Hawaii 96816

Phone: (808) 734-7235

QUESTIONS PRESENTED

1. Whether the Denial of Jurisdiction, without a hearing is adverse and contrary to the Case Ruling of the United States Supreme Court in United States, Petitioner v. James Daniel Good Real Property et al, U.S. No. 92-1180, in which a hearing is required where Real Property rights are at issue. (See Exhibit 1)

2. Whether in a Disclosure Action, the Burden of Proof shall be on the Respondent, rather than Petitioner Au, according to Rule 229 (a) of the United States Tax Court. (See Exhibit 2)

3. Whether Respondent's conclusion of "No Redemption" for the issuance of the IRS Deed (Exhibit 3) was a designed perpetuation of a "False Statement", subject to prosecution by the Criminal Division of the United States Department of Justice under Chapter 47, Fraud and False Statement (18 USCS § 1001). (See Exhibit 4)

4. Whether "RICO" Damages (Title 18, U.S. Code, Section 1961) against the United States Government for prima facie evidences of undue political influences by Respondent must require service upon the United States Solicitor General according to Rule 28.4 (a) of the Supreme Court. (See Exhibit 5)

TABLE OF AUTHORITIES

Citations — Page(s)

United States, Petitioner v. James Daniel Good, Real Property, et al (U.S. No. 92-1180).....i, 2, 5, 10

Chapter 47, Fraud and False Statement 18 U.S.C.S. § 1001.....i, 6, 15

Title 18 U.S. Code Section 1961 - RICO.....i, 6

Code Section 6110 (b) Written Determination.....1, 2

Code Section 7482 (a) - Jurisdiction for Certiorari.....1

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U.S. Tax Court - Rule 229 (a) Burden of Proof on Commissioner.....i, 2, 5, 11

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STATEMENT OF OPINIONS BELOW

1. Dated Dec. 13, 1993 (Exhibit 6)

In the United States Tax Court --

ORDER FOR DISMISSAL FOR LACK OF JURISDICTION

"-petitioner has not shown to the satisfaction of the Court issuance of a written determination as defined in I.R.C. Section 6110(b)--"

2. Dated Nov. 4, 1994 (Exhibit 7)
In the United States Court of Appeals for the Ninth Circuit

MEMORANDUM affirming Tax Court's Dismissal

" Au's petition failed to provide a file number of the written determination from which he sought the additional disclosure. Au's petition also did not contain an adequate description of the background file document of the deleted information Au wanted disclosed.
Therefore, the tax court was correct in holding that Au failed to show that a written determination as defined under 26 U.S.C. § 6110 was issued."

STATEMENT OF JURISDICTION

3. Dated Jan 19, 1995. The petition for Rehearing is denied by the Ninth Circuit Ct. (Exhibit 8)

4. Dated Feb. 8, 1995 Notice of Appeal (Exhibit 9) The jurisdiction of this Court for the review of the decision of the Court of Appeals for the Ninth Circuit through a Petition for Certiorari is contained in the Statutory provisions of Code Section 7482(a).

STATEMENT OF THE NECESSITY FOR PLENARY REVIEW BY THIS COURT

5. The Tax Court ignored the default of Respondent's Notion to Dismiss which was filed on Oct. 21, 1993, and which is definitely beyond the 30 days allowed under Tax Court Rule 223(a)(1). Also

6. The Tax Court erred in placing the Burden of Proof in the Disclosure Action on Petitioner, rather than on Respondent as required by its own Rule 229(a).

7. The Tax Court ignored the fact that the IRS Deed, which is the gravamen of the case, can be issued only if there is NO Redemption. Therefor additional disclosure of any background file data is necessary to support its issuance; in as much as IRS agent, R. Nadler had given sworn testimony that the statutory right of redemption was duly exercised and consummated.

8. The Tax Court Opinion that there was no "written determination" was frivolous, in that the IRS Deed issued on the pseudo conclusion of "No Redemption" is of itself a written determination, which is written as written could ever be! (26 U.S.C. § 6110)

9. The Tax Court Denial of Jurisdiction without a hearing is contrary to the opinion of the United States Supreme Court in United States, Petitioner v. James Daniel Good Real Property et al, U.S. No. 92-1180.

10. The U.S. Court of Appeals for the Ninth Circuit has so far sanctioned the adjudication and decision of the Tax Court, as to call for this Court's power of supervision.

STATEMENT OF THE CASE

11. On July 5, 1989, Shizuko Yamamoto had exercised her statutory right of Redemption of her property and had vested title in Hanalea, Inc., her agent in the Joint Venture of Yamamoto, Au, and Ten Fifty, Inc. (Exhibit 10)

12. On October 18, 1989, Respondent issued an IRS Deed to Purchasers, Roland Higashi, et al (Exhibit 3).

13. On May 8, 1992, the State Land Court Judge ordered the recordation of the IRS deed, in spite of, and not with standing the following:

14. IRS Agent, R. Nadler, had given her sworn testimony in the Land Court that Redemption had already been exercised and consummated.

> "I believe that the property had been redeemed so I placed a copy of the letter in the file and closed out our seizure file on it."
> (See pg. 14, line 17, Petition in Tax Court)

15. Nadler's testimony of the cover-up tampering with the official file on the Redemption by her Supervisor.

pg. 22, line 22 of Petition in Tax Court.

"A. After we -- after a decision had been made to have the deed to the purchasers, then the question as to whether -- you can't both issue a deed and have the property redeemed. It was one or the other. So since we --

pg. 23, line 1

"issued the deed, we lined out that the property had been redeemed.

Q. And the other line that you said you were responsible for was line 41. And is that your signature?
A. Yes, it is.

Q. Okay. Now is that also crossed off?
A. It is.

Q. Do you know whose signature that is before?
A. Thomas Stephen (phonetic) who is the chief. The special Proceeding Function.

Q. Now, is he a supervise -- is he your supervisor?
A. He was, yes, in 1989.

16. The State Judge admits of no consideration for jurisdiction over redemption. To begin with, the State Judge has no jurisdiction over the Federal Statutory provisions on Redemption.

> "Now, in making this determination, I am not bound nor do I follow any asserted agency determination of the IRS or anybody else as to whether or not Redemption was proper or improper." -

pg. 30, line 14, of Petition in Tax Court.

17. In order to comply with the requirement of exhausting all administrative remedies available within the Internal Revenue Service (See Rule 221 C-4), Petitioner received only rebuffs from the following:

(a) the District Director
(b) District Counsel
(c) Assistant Chief Counsel (General litigation)
(d) Deputy Assistant Chief Counsel (General litigation)

(See exhibits 6, 7, 8, 9 of Petition in Tax Court)

ARGUMENTS

18. Any rule of the administrative Tax Court cannot conceivably prevail over a Constitutional guarantee!

It is totally inconceivable that Petitioner's property rights guaranteed protection under the Fifth Amendment could fair so poorly and callously in the hands of those who have given their oath of office to uphold and defend the Constitution of the United States.

19. We believe that the dogma of Stare-decisis is still in vogue, and that the inferior, lower courts are not at liberty to pursue, uninhib-

ited, their own agenda, with total disregard for the opinion of the Supreme Court.

20. For the blatant breach of discipline, the writ of certiorari should be issued forwith for the willful non compliance with the dictum of the Supreme Court in U.S. No. 92-1180.

21. The Appeals Court had further compounded the Tax Court's faulty decision by adding onto the complaint that there is "No Number" attributed to the written determination, by Au. An unbiased, unjaundiced, clear-eye reading of Rule 221(c)(1) will show that the "number" need not be absolute, as in sequential order, but "any identifying number or symbol." The date on the IRS Deed is as good an identifying symbol as any. Furthermore, if the determination is to be made by the Commissioner and not by Au, don't you think the responsibility for the number should be on the Respondent, the Commissioner, and not on Petitioner, Au? To be sure, this question is resolved by reading Rule 229 (a), which unequivocably places the burden of proof on the Commissioner and not on Au.

22. Procedural law should not be interpreted to an absolute absurdity as an excuse for not assuming jurisdiction. Such procedural "cop out" will reduce litigation to mere wrangling over semantics, with the substantive issue of the objectivity and purpose of the statutory pro vision ignored and lost in the shuffle. Perhaps this may be the prescribed strategy, when there is no substantive defense. It may be so, but it shall not be tolerated in the case at hand.

23. Clearly and understandably, the very purpose of the statutory pro vision for Additional Disclosure is to prevent Respondent, the Commissioner, from making private, undisclosed "deals", which presumably was the previous modus operandi -- a good reason as any for the enactment of the law in the first place.

24. It is supported by prima facie evidences that the awarding of the IRS Deed was a pre-ordained strategy of deceit, and not a simple innocent mistake. The IRS explicitly does not make warranty of title to purchasers. There were no taxes to be collected or to be assessed, which could have justified the issuance of the IRS Deed. Furthermore, a simple admission of error (we all make mistakes) is all that

was necessary to resolve the matter at the onset, with no damages for all concerned. Failure of such simple resolution, portends of the more sinister case of "payoffs", political or otherwise. And so it was the case that developed.

25. It takes a lot of imputing to convince a career employee to sacrifice his integrity in the issuance of the surreptitious IRS Deed. It may be some comfort to him to find an associate who is in a supervisory position to literally obliterate the record of the accomplished Redemption. As if that were not enough, he had at least four levels of administrative review supporting his illicit act; and the whole litigation staff of the department repeating his refrain of "No Redemption". And if repetition were to amount to anything, his "big lie" had become fodder for even the courts to ingest. The beneficiary of the fraudulent IRS Deed is a stalwart associate of Hawaii's political triumvirate, which had appointed the State Judge who was not afraid to render a "proper" decision, even though he resigned soon thereafter. The crowning jewel is that the beneficiary-purchaser was able to obtain the property at the seizure sale for only $18,000.00, which property value escalated to $203,500.00 soon after title was transferred with the recordation of the IRS Deed. (See Petitioner's Reply Brief in the Appeals Court)

26. It has been indeed a "sweetheart deal". However, what goes around will come around -- hopefully. Prosecution of the career IRS employees under Chapter 47, Fraud and False Statement (18 USCS § 1001) may uncover the culpability trail to the Political Power House that ordered the "pay off". It is a RICO conspiracy, no doubt!

CONCLUSION

27. For the reasons stated above, Petitioner-Appellant respectfully requests the issuance of the writ of certiorari to the United States Court of Appeals for the Ninth Circuit, with the mandate for the rescinding, revocation, and repudiation of the surreptitious IRS Deed; and for the implementation of the necessary procedures for the determination and assessment of RICO damages.

Dated: Honolulu, Hawaii, March 10, 1995

Alfred Y.K. Au, pro se
for Petitioner-Appellant
1050 - 12th Avenue
Honolulu, Hawaii 96816
Phone: (808) 734-7235

CERTIFICATE OF SERVICE

The undersigned hereby certifies that two (2) copies each of the foregoing Jurisdictional Statement were transmitted by the U.S. Postal Service, postage prepaid to the following:

LORETTA C. ARGRETT, Assistant Attorney General
Tax Division, U.S. Dept. of Justice
Tenth and Constitution Ave.
Washington, D.C. 20530

MS. JO ANN HARRIS, Assistant Attorney General
Criminal Division, U.S. Dept. of Justice
Tenth & Constitution Ave.
Washington, D.C. 20530

MR. DREW S. DAYS, III.
U.S. Solicitor General
U.S. Department of Justice
Tenth & Constitution Ave.
Washington, D.C. 20530

Dated: Honolulu, Hawaii March 10, 1995.

ALFRED Y.K. AU

APPENDIX

(Schedule of Exhibits) Page(s)

Exhibit 1 United States Petitioner, v. James Daniel Good, Real Property, et al U.S. No. 92-1180.....10

Exhibit 2 Tax Court Rule 229(a) Burden of Proof on Respondent, Commissioner.....11

Exhibit 3 Internal Revenue Deed.....12

Exhibit 4 Chapter 47, Fraud and False Statement 18 USCS S L001.....15

Exhibit 5 U.S. Supreme Court Rule 28,4(a) Service of U.S. Solicitor General.....16

Exhibit 6 U.S. Tax Court - Order for Dismissal.....17

Exhibit 7 U.S. Court of Appeals for 9th Circuit Memo affirming Tax Court's Dissmissal.....18

Exhibit 8 Petition for Rehearing DENIED.....21

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Exhibit 10 Hanalea Inc.'s Title.....23

In United States, Petitioner v. James Daniel Good Real Property, et al. U.S. No. 92-1180, Justice Kennedy delivered the opinion of the Court.

> "The principal question presented is whether , in the absence of exigent circumstances, the Due Process Clause of the Fifth Amendment prohibits the Government in a civil forfeiture case from seizing real property without first affording the owner notice and an opportunity to be heard. We hold it does."

IN THE UNITED STATES TAX COURT

RULE 229. BURDEN OF PROOF

The burden of proof shall be upon the petitioner as to the jurisdictional requirements described in Rule 220 (c). As to other matters, the burden of proof shall be determined consistently with Rule 142 (a), subject to the following:

(a) In an action for additional disclosure, the burden of proof as to the issue of whether disclosure should be made shall be on the Commissioner and on any other person seeking to deny disclosure. See Code Section 6100 (f)(4)(A)

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL ( ) PICKUP ( )

DEED OF DISTRICT DIRECTOR OF INTERNAL REVENUE

THIS INDENTURE, made this 18 day of October 1989 by and between the United States of America, Internal Revenue Service, by and through, the District Director of Internal Revenue at Honolulu, Hawaii, the authorized delegate of the Secretary of the Treasury hereinafter referred to as the "District Director", and Roland Hideo Higashi, husband of Janice Setsuyo Higashi, whose address is 32 Poko Place, Hilo, Hawaii, 96720, Clifton Kenichi Tsuju, husband of Dorothy Ellen Tsuji, whose address is 1382 Auahi Place, Hilo, Hawaii, 96720, Kenneth Kenichi Tanaka, husband of Amy Emiko Tanaka, whose address is 891 Komomala Drive, Hilo, Hawaii 96720, and Howard Jitsuo Mimaki, husband of Nobuko Ihara Mimaki, whose address is 49 Nohea Street, Hilo, Hawaii, 96720.

WITNESSETH:

WHEREAS, certain real property located at Puna, County of Hawaii, State of Hawaii, more particularly described in Exhibit A which is attached hereto and incorporated by reference herein, was seized from Shizuko Yamamoto, wife of Hirotoshi Yamamoto, 85-175 Farrington Highway, B-426, Waianae, Hawaii 96792, for the nonpayment to the United States of America of Internal Revenue taxes which were duly assessed against the aforesaid Hirotoshi and Shizuko Yamamoto; and

WHEREAS, the aforementioned property was sold at a sealed bid public sale held at the Office of the Internal Revenue located at 154 Waianuenue Avenue, Federal Building, Room 307, Hilo, Hawaii 96720 on the 15th day of March 1989 to Roland Hideo Higashi, Clifton Kenichi Tsuji, Kenneth Kenichi Tanaka and Howard Jitsuo Mimaki for the sum of $18,000.00 which amount was the highest bid

EXHIBIT - 3

received. Said sale was conducted in accordance with the provisions of Subchapter D of Chapter 64 of the Internal Revenue Code and the regulations promulgated thereunder. At the conclusion of said sale, IRS Form 2435, Certificate of Sale of Seized Property, Serial No. 99-11-89-18 was issued to the purchasers, Roland Hideo Higashi, Clifton Kenichi Tsujki, Kenneth Kenichi Tanka and Howard Jitsuo Mimaki.

WHEREAS, more than 180 days have elapsed from the date of sale and the date of issuance of said Certificate of Sale set forth above, and the purchasers having surrendered to the District Director of Internal Revenue said Certificate of Sale.

NOW THEREFORE the District Director of Internal Revenue at Honolulu, Hawaii, in order to carry into effect the sale as above described and directed and in conformity with the statutes in such cases made and provided, and in consideration of the sum of $18,000.00 the receipt of which is hereby acknowledged, does hereby grant unto Roland Hideo Higashi, a married man, Clifton Kenichi Tsuji, a married man, Kenneth Kenichi Tanaka, a married man, and Howard Jitsuo Mimaki, a married man, as tenants in common, their heirs, and assigns forever, (hereinafter called the "Grantees") all the right, title, and interest of the said Shizuki Yamamoto in and to the real property described in Exhibit A which is attached hereto and incorporated by reference herein.

TO HAVE AND TO HOLD the same, to together with all the improvement thereon, and the tenements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantees as aforesaid, forever.

IN WITNESS WHEREOF, the District Director of Internal Revenue has executed this instrument the day and the year first above written.

UNITED STATES OF AMERICA
District Director
Internal Revenue Service
Honolulu District

By: Billy J. Brown

EXHIBIT - 3 cont.

State of Hawaii) ss.
City and County of Honolulu)

On this 18 day of October 1989 before me personally appeared Billy J. Brown, District Director of Internal Revenue at Honolulu, Hawaii personally known to me to be the person whose name is described in and who executed the foregoing instrument on behalf of the United States of America and acknowledged that he executed the instrument as the free act and deed of the United States of America.

Notary Public, First Judicial Court
State of Hawaii
My Commission expires: October 18, 1991

EXHIBIT - 3 cont.

Chapter 47, Fraud and False Statement (18 USCS § 1001)

§ 1001. Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both
(June 25, 1948, ch 645. § 1, 62 Stat. 749.)

RULES OF THE SUPREME COURT

Rule 28.4(a). If the United States or any department, office, agency, officer, or employee thereof is a party to be served, service must be made upon the Solicitor General, Department of Justice, Washington, D.C. 20530; and if a response is required or permitted within a prescribed period after service, the time does not begin to run until the document actually has been received by the Solicitor General's office. Where an agency of the United States is authorized by law to appear in its own behalf as a party, or where an officer or employee of the United States is a party, in addition to the United States, such agency, officer, or employee also must be served, in addition to the Solicitor General; and if a response is required or permitted within a prescribed period, the time does not begin to run until the document actually has been received by both the agency, officer, or employee and the Solicitor General's office.

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

HANALEA, INC. AND ALFRED Y. K. AU, EXECUTIVE DIRECTOR..... Petitioner,	)	
V.	)	Docket No.19882-93 D
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

Petitioner on September 13, 1993 filed a petition for additional disclosure pursuant to I.R.C. Section 6110. Respondent, on October 21, 1993 filed a motion to dismiss for failure to state a claim upon which relief can be granted. In as much as petitioner has not shown to the satisfaction of the Court issuance of a written determination as defined in I.R.C. Section 6110(b), it is

ORDERED that the motion is granted in that this case is dismissed for lack of jurisdiction.

(Signed) L.W. Hamblen Jr.
Chief Judge

Entered: DEC 13 1993

Form 50
Rev. Apr. 1970

EXHIBIT - 6

FILED
NOV 04 1994
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFRED Y. K. AU,	) No. 94-70048
	)
Petitioner-Appellant,	) Tax Ct. No. 19882-93D
	)
v.	)
	)
COMMISSIONER OF INTERNAL REVENUE,	)
	) MEMORANDUM*
Respondent-Appellee.	)
	)

Appeal from the United States Tax Court

Submitted November 1, 1994**

Before: WALLACE, Chief Judge, GOODWIN and NORRIS, Circuit Judges.

Alfred Y. K. Au appeals pro se the tax court's dismissal for lack of jurisdiction of Au's petition for additional disclosure filed pursuant to 26 U.S.C. § 6110.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App P. 34(a); 9th Cir. R. 34-4.

EXHIBIT - 7

1/ We have jurisdiction pursuant to 26 U.S.C. § 7482, and we affirm. We review decisions of the tax court on the same basis as we review decisions entered after civil bench trials in the district court. Mayors v. Commissioner, 785 F.2d 757, 759 (9th Cir. 1986). The tax court's dismissal of Au's case is reviewed de novo. Wilcox v. Commissioner, 848 F.2d 1007, 1008 (9th Cir. 1986).

Initially, Au contends that he was not served with a copy of the motion to dismiss. The motion to dismiss was served on Au through the mail in accordance with Tax Ct. R. 21(b)(1) which provides that service is complete upon the mailing of the motion. See eg., Kim v. Commandant, Defense Language Institute, 772 F.2d 521, 524 (9th Cir. 1985).

Au also contends that the tax court erred by dimissing his petition. This contention lacks merit.

Au's petition was filed pursuant to 26 U.S.C. § 6110(f)(4). Under that section, an individual may seek to obtain additional disclosure of information contained in any written determination 2/ or background file document

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1/ We treat Au's "Motion To Amend Caption Of Case" as a motion to amend the notice of appeal. So construed, the motion is granted. Because corporations must appear through an attorney, Hanalea, Inc. is dismissed from this case for lack of jurisdiction. C.E. Pope Equity Trust v. United States, 818 F.2d 696, 697-8 (9th Cir. 1987). The record and docket shall now reflect that Au is the only appellant is this case.

2/ The Internal Revenue Code defines a written determination as a "ruling, determination letter, or technical advice memorandum." 26 U.S. C. § 6110(b)(1)

3/ that has been made open or subject to inspection. The request for additional disclosure must "contain the file number of the written determination or a description of the background file document (including the file number of the related written determination), the deleted information which in the opinion of such person should be open or subject to inspection, and the basis for such opinion." Treas. Reg. S 301.6110-5(d). Au's petition failed to satisfythese requirements. Au failed to provide a file number of the written determination from which he sought the additional disclosure. Au's petition also did not contain an adequate description of the background file document or the deleted information Au wanted disclosed. Therefore, the tax court was correct in holding that Au failed to show that a written determination, as defined under 26 U.S.C. § 6110, was issued.

For these reasons the tax court did not err by dismissing Au's petition.

AFFIRMED. 4/

3/ With respect to a written determination, a background file document "includes the request for that written determination, any written material submitted in support of the request, and any communication (written or otherwise) between the Internal Revenue Service and persons outside the Internal Revenue Service in connection with such written determination." 26 U.S.C. § 6110(b)(2).

4/ We reject Au's remaining due process and obstruction of justice claims.

FILED

JAN 19 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFRED Y. K. AU,	) No. 94-70048
	)
Petitioner-Appellant,	) Tax Ct. No. 19882-93D
	)
v.	)
	)
COMMISSIONER OF INTERNAL REVENUE,	)
	) ORDER
Respondent-Appellee.	)
	)

Before: WALLACE, Chief Judge, GOODWIN and NORRIS, Circuit Judges.

The petition for rehearing is denied.

EXHIBIT - 8

FILED

FEB 13 1995
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFRED Y. K. AU,	) No. 94-70048
	)
Petitioner-Appellant,	) Tax Ct. No. 19882-93D
	)
v.	)
	)
COMMISSIONER OF INTERNAL REVENUE,	)
	) NOTICE OF APPEAL
Respondent-Appellee.	)
	) Certificate of Service

Notice is hereby given that an appeal for a Writ of Certiorari in the United States Supreme Court shall be filed on the Order from this Court, Filed on January 19, 1995, denying our Petition for Rehearing.

The basis of the appeal is this Court's Opinion that:

> "Au failed to provide a file number of the written determination from which he sought the additional disclosure."

Respectfully submitted, Appellant Au, pro se.

Dated: Honolulu, Hawaii, February 8, 1995.

ALFRED Y.K. AU

EXHIBIT - 9

STATE OF HAWAII
(Bureau of Conveyances)

The original of this document was recorded as follows:

DOCUMENT NO. **1647810**

DATE JUL -5 1989 TIME 10:24 am

and from which Certificate of Title(s) No(s),
331,690 has (have) been issued.

LAND COURT SYSTEM
Return by Mail ( ) Pickup ( ) To:

DEED

T.M.K. 3rd Div. 1-1-4-5

KNOW ALL MEN BY THESE PRESENTS:

That SHIZUKO YAMAMOTO, wife of Hirotoshi Yamamoto, of the City and County of Honolulu, State of Hawaii, hereinafter called the "Grantor", for and in consideration of the sum of TEN DOLLARS ($10.00) and other valuable consideration to it in hand paid by HANALEA, INC., a Hawaii corporation, whose principal place of business and post office address is 1050 - 12th Avenue, Honolulu, Hawaii 96816, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, forever unto the Grantee, its successors and assigns, the property more particularly described in Exhibit "A" attached hereto and made a part hereof by reference, reserving unto the Grantor, her husband Hirotoshi Yamamoto, in the event of her death, and in the event of death of

her husband to their daughter Kay Yamamoto, the exclusive non-transferable right to FIFTY PERCENT (50%) of the net profit to be derived from the operation, lease or other disposition and/or sale of said property.

And the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor both at law and in equity therein and thereto save and except for said reservation.

TO HAVE AND TO HOLD the same, together with all of the improvements thereon, and the tenements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith unto the Grantee as aforesaid, forever, save and except for said reservation.

And the Grantor hereby covenants and agrees, with the Grantee: That the Grantor is lawfully seized in fee simple of the property hereby granted and conveyed; and that Grantor has good right to sell and convey the same in the manner herein set forth; that the same are free and clear of all encumbrances except as herein mentioned; and that the Grantor will WARRANT and DEFEND the same unto the Grantee, against the lawful claims and demands of all persons, except as herein set forth.

The term "Grantor" or "Grantee" herein or any pronoun used in place thereof shall mean in include the masculine and the feminine, the singular or the plural number and jointly and severally individuals, firms or corporations, and their and each of their respective successors, executors, administrators and assigns according to the context hereof.

IN WITNESS WHEREOF, the Grantor and Grantee have executed these presents this 5th day of July, 1989.

GRANTOR:

Shizuko Yamamoto
SHIZUKO YAMAMOTO

GRANTEE:
HANALEA, INC.

By: Clarence B.W. Ching
its PRESIDENT

EXHIBIT - 10 cont.